

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 09/720,096 Confirmation No.: 6906
Applicant : Dan Nilsson, et al.
Filed : February 1, 2001
Title : METHOD OF PREVENTING BACTERIOPHAGE INFECTION OF
BACTERIAL CULTURES
TC/Art Unit : 1652
Examiner: : D.J. Steadman, Ph.D.

Docket No. : 54337.000009
Customer No. : 21967

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT OF SUBSTANCE
OF INTERVIEW UNDER 37 C.F.R. § 1.133

Sir:

In accordance with 37 C.F.R. § 1.133 and M.P.E.P. § 713.04, Applicants herein provide a summary of the interview between Applicants' representatives and Examiner Steadman on March 31, 2005 at the United States Patent and Trademark Office. Applicants generally agree with Examiner's statement of the substance of the interview mailed April 6, 2005, and submit the following to comply with 37 C.F.R. § 1.133.

The claims discussed during the interview were those rejected or objected to in the Office Action mailed October 1, 2004. No prior art was discussed during the interview. In general, the

amendments discussed were those submitted in the response filed March 1, 2005 as well as certain proposals made by Examiner Steadman.

The interview summary form indicates that the response filed March 1, 2005 would appear to overcome the outstanding rejections with respect to all claims except claims 12-14, 17, and 31. With respect to the independent claims, the Examiner indicated that the remaining rejections would be overcome by inserting "cell" or "DNA" before "replication" in the independent claims. Applicants point out that the issues raised with respect to claim 31 are very different than those raised with respect to claims 12-14, and 17. In this regard, the Examiner suggested incorporating the amendment of, e.g., claim 1, into claim 31 during the interview. In particular, the Examiner referred to the language "the milk is acidified to a pH lower than milk acidified using a wild type parent strain of said purine or thymidine auxotrophic bacterial strain." Applicants respectfully submit that it was apparent during the interview that making this amendment and inserting "cell" or "DNA" before "replication" in the independent claims would overcome the outstanding rejection of claim 31 for the same reason that the rejection of other claims, e.g., claim 1, had been overcome.

With respect to claims 12-14 and 17, the Examiner raised various issues and suggested making certain amendments that were not previously made with respect to other claims. The Examiner questioned whether "a genetically modified strain" in claim 12 or "bacterial strain" of claim 17 is limited to purine/thymidine auxotroph of claim 1 or is meant to refer to another bacterial strain. The Examiner also questioned whether claim 17 further limited independent claim 1. The Examiner suggested amending claim 12 to limit the recited strain to the auxotroph of claim 1 transformed with a plasmid comprising a specific nucleic acid sequence encoding ATPase.

Finally, during the interview, the Examiner stated that a notice of non-compliant amendment would be issued with respect to the March 1, 2005 amendment and that the amendments proposed during the interview could be made in response to the notice of non-compliant amendment.

Applicants would once more like to thank Examiner Steadman for the courtesy of an interview. No fees are believed to be due in connection with this submission. In the event any variance exists between the amount authorized to be charged to the Deposit Account and the Patent Office charges for reconsideration of this application, please charge or credit any difference to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,
HUNTON & WILLIAMS LLP

By: 

Stanislaus Aksman
Registration No 28,562

Jeff B. Vockrodt
Registration No. 54,833

Dated: May 6, 2005
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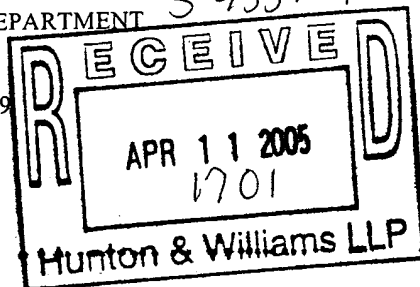
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,096	02/01/2001	Dan Nilsson	54337.000009	6906

21967 7590 04/06/2005

HUNTON & WILLIAMS LLP
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WASHINGTON, DC 20006-1109



EXAMINER

STEADMAN, DAVID J

ART UNIT PAPER NUMBER

1652

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKETED	4-11-05
ACTION CODE	Corrected Amendment
BASE DATE	4-6-05
DUE DATE	5-6-05
DEADLINE	10-6-05
ATTORNEYS	SAA/JTP/JBV

Statement of Substance Due

**Notice of Non-Compliance
Amendment (37 CFR 1.121)**

Application No.

09/720,096

Examiner

David J. Steadman

Applicant(s)

NILSSON ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 01 March 2005 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

☐ 1. Amendments to the specification:

- ☐ A. Amended paragraph(s) do not include markings.
☐ B. New paragraph(s) should not be underlined.
☐ C. Other _____.

☐ 2. Abstract:

- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
☐ B. Other _____.

☐ 3. Amendments to the drawings:

- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
☐ C. Other _____.

☒ 4. Amendments to the claims:

- ☐ A. A complete listing of all of the claims is not present.
☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
☐ E. Other: _____.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

Failure to timely respond to this notice will result in:

- Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or
Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

DAVID J. STEADMAN, PH.D.
PRIMARY EXAMINER

Part of Paper No. 03312005

Interview Summary	Application No.		Applicant(s)	
	09/720,096		NILSSON ET AL.	
	Examiner		Art Unit	
	David J. Steadman		1652	

All participants (applicant, applicant's representative, RTO personnel):

(1) David J. Steadman.

(3) Stanislaus Aksman.

(2) Jeff B. Vockrodt.

(4) _____

Date of Interview: 31 March 2005.

Type: a) ☐ Telephonic b) ☐ Video Conference
c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____

Claim(s) discussed: Claims objected/rejected in Office action mailed 10/01/04.

Identification of prior art discussed: NONE.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

AS 03-31-05
Examiner's signature, if required

Summary of Record of Interview Requirements

MAY 06 2005

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Examiner suggested clarifying the term "but is not capable of replication" in, e.g., claim 1 step (iii) to read either "capable of DNA replication" or "capable of cell replication." Examiner suggested clarifying whether "a genetically modified strain" in claim 12 or "a bacterial strain" in claim 17 is limited to the purine/thymidine auxotroph of claim 1 or is meant to refer to a separate bacterial strain. The examiner questioned applicants' representatives as to whether claim 17 further limits claim 1. The examiner indicated that the rejections of claims 12-14, 17, and 31 under 35 USC 112, first paragraph, would likely be maintained. The remaining claims would appear to overcome the outstanding rejections. Regarding claim 12, the examiner suggested limiting the strain to the auxotroph of claim 1 transformed with a plasmid comprising a specific nucleic acid sequence, i.e., SEQ ID NO: , encoding an ATPase. The examiner suggested incorporating the amendment of, e.g., claim 1, into claim 31.